Lowe's Companies, Inc. *and* Frank T. Plemmons.
Case 26-CA-9185

February 1, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 21, 1982, Administrative Law Judge Howard I. Grossman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Lowe's Companies, Inc., Hernando, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We further find it unnecessary to rely on the Administrative Law Judge's discussion of *Bucyrus-Erie Company*, 247 NLRB 519 (1980), since we agree with his finding that Respondent had actual knowledge that Plemmons was acting on behalf of the other drivers.

[2] We agree with the Administrative Law Judge's recommended remedy including reinstatement, particularly since Plemmons was not shown to have violated Respondent's own rule requiring more than four moving violations within a 12-month period in order to trigger Respondent's progressive disciplinary system.

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge: The charge was filed on July 8, 1981, by Frank T. Plemmons (herein Plemmons or the Charging Party). The complaint was issued on August 21, 1981, and, as amended at the hearing, alleges that Lowe's Companies, Inc. (herein Respondent), discharged Plemmons on or about May 19, 1981, because he concertedly complained to Respondent about wages, hours, and working conditions, in order to discourage employees from engaging in such activities, in violation of Section 8(a)(1) of the National Labor Relations Act (herein the Act). A hearing was conducted before me on these matters in Memphis, Tennessee, on April 19 and 20, 1982. Upon the entire record, including briefs filed by the General Counsel and Respondent, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation engaged in the distribution of hardware and building supplies, with facilities located at Hernando, Mississippi, and at North Wilkesboro and Thomasville, North Carolina. Respondent annually sells and ships from its Hernando, Mississippi, facility goods and materials valued in excess of $50,000 directly to points outside the State of Mississippi, and annually purchases and receives at said facility goods and materials valued in excess of the same amount directly from points outside the State of Mississippi. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Plemmons' Employment and Driving Record*

The Charging Party started working for Respondent in June 1976 on the loading dock at its Hernando facility, and was later transferred to the forklift shop, then to short haul driving, and, in the middle of 1978, to long haul driving. He had a chauffeur's license issued by the State of Mississippi. Records of the State Department of Motor Vehicles show that, for the period from December 1978 through September 1980, Plemmons received seven speeding tickets—one in December 1978, two in 1979, and four in 1980 (G.C. Exhs. 4(a) and (b)).[1] Plemmons reported another such violation to the Company in December 1979, a date which does not correspond with any date on the state report (G.C. Exh. 4(c)).

Because of these violations, Plemmons was placed on probation by the Motor Vehicle Department in May 1980. He testified without contradiction that he informed Hernando dispatcher Coy Kitchens of this fact.[2] On November 13, 1980, Plemmons' license was suspended for 30 days.[3] Upon receipt of the suspension, Plemmons called Kitchens and told him his license had been suspended because of too many speeding tickets, and that he wanted a 30-day leave of absence. Plemmons testified

[1] The dates of the violations are December 14, 1978; March 17 and June 20, 1979; and January 10, February 12, August 15 and September 8, 1980 (G.C. Exh. 4(b)).

[2] The parties stipulated and I find that Kitchens was a supervisor within the meaning of the Act from August 25, 1980, to September 28, 1981.

[3] Resp. Exh. 1. The "Notice of Withdrawal of Driving Privilege" states that Plemmons had "been convicted as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways." Although Plemmons notified Kitchens of the suspension, Respondent's counsel stated that he first learned of this document on the day of the hearing.

that a patrolman told him that his record would be "wiped clean" after his suspension, and Plemmons repeated this to Kitchens. Plemmons met with Kitchens a few days later, and asked to work in the warehouse during the suspension period. After determining that there was a vacancy and checking with Jerry A. Miller,[4] Kitchens granted the request.

Respondent periodically required its drivers to certify the number of their traffic violation convictions during the preceding 12-month period. Jay Martin, who became Respondent's director of fleet operations on March 30, 1981,[5] testified that the drivers were required to file such certifications in December 1980. There were about 9 or 10 drivers at the Hernando facility. Respondent's records show that the drivers' certifications were filed early in December 1980,[6] most of them during the period when Plemmons was working in the warehouse. Plemmons had filed such certifications in June and December 1979 (G.C. Exhs. 4(c) and (d)), but did not file one in December 1980.

The Motor Vehicle Department returned Plemmons' driver's license in December 1980, and Plemmons asked Kitchens to be returned to work as a driver. Kitchens and Miller, however, wanted "proof positive for their insurance company," and asked Plemmons to get a letter. Accordingly, Plemmons obtained a letter from the State, advising him that his driving privilege had been restored, and he gave it to Kitchens and Miller (G.C. Exh. 14). According to Plemmons, Miller asked whether Plemmons was ready to start driving, and Plemmons answered affirmatively. "We're glad to have you back," Miller said, and Plemmons was driving a truck the same night of the conversation. Kitchens placed the letter from the Motor Vehicle Department in Plemmons' file.

Miller testified on direct examination that he was present with Kitchens in the latter's office when Plemmons asked to return to work as a driver. According to Miller, he granted the request, but warned Plemmons that he was "walking on thin ice," and that Respondent would have to terminate him if he received any more speeding tickets.

On cross-examination, Miller testified that he said this because Plemmons' license had been suspended. However, he knew that it had been reinstated, since Plemmons gave him a letter to this effect. Miller denied knowing the reason for the suspension. Asked why he warned Plemmons about "speeding" tickets, Miller then admitted that he did know the reason, but later vacillated on this subject. Miller said that Respondent had no policy at that time regarding the number of tickets a driver could receive before being discharged. Kitchens, who was present during this conversation, testified that Plemmons had a "pretty bad record" and that Miller told him that he was "skating on thin ice" and would have to "watch" himself. However, Kitchens did not recall any other warning. Plemmons denied that Miller told him specifically that he would be discharged if he received any more speeding tickets.

The testimony of Plemmons and Kitchens is not inconsistent, while Miller contradicted himself. I conclude that Respondent returned Plemmons to a driving job when his license was restored. I also conclude that Miller (and Kitchens) then knew that the reason for the suspension was an excessive number of speeding tickets, but that Respondent had no policy at that time on discipline of drivers for traffic violations. Miller did tell Plemmons that he was "skating on thin ice" and would have to watch himself, but did not issue a specific warning to the effect that one more ticket would result in his discharge.

Plemmons testified without contradiction that, in or about the second week of January 1981, Kitchens asked him to fill out his "violation sheet for this year." As noted above, Plemmons was working in the warehouse when most of the drivers submitted certifications in December 1980. After receiving Kitchens' instructions in January, Plemmons went to the office and had a conversation with the "dispatch secretary," Barbara Vickery. He asked her how the Company wanted the form to be filled out, and whether it wanted all the violations for the preceding 12 months. Vickery did all the "paperwork" for the drivers, according to Plemmons. She replied that, "after we had done gone [sic] through all of this suspension and such," Plemmons "wasn't supposed to have any tickets." Plemmons told Vickery about one ticket he had received when driving his personal car after the suspension had been lifted. I credit Plemmons' uncontradicted testimony. Martin acknowledged that Plemmons' 1980 certification had been "overlooked" when he returned to driving after his warehouse duties.

On April 1, 1981, about 3 months after his reinstatement as a driver, Plemmons received another speeding ticket while driving a company vehicle (G.C. Exhs. 4(e) and 19). He testified without contradiction that he called and informed Kitchens of this fact, and later gave him a copy of the ticket. According to Plemmons, Kitchens said nothing.

B. *New Rules and Procedures*

Ron Perry became Respondent's director of distribution in November 1980.[7] He testified that he discovered a number of organizational deficiencies, one of which was the fact that the drivers did not know their job requirements. To correct this, Respondent wrote a policy and procedure manual, and conducted meetings with Respondent's employees to communicate these new rules. The meeting for the Hernando employees was conducted

[4] The parties stipulated and I find that Miller was a supervisor within the meaning of the Act from November 1, 1980, to March 30, 1981.

[5] Martin testified that he succeeded to the position held by Miller. The latter gave the title of the position as "Director of Fleet Services," while Martin and the pleadings have it as "Director of Fleet Operations." The latter is probably correct. The pleadings establish and I find that Martin was a supervisor within the meaning of the Act.

[6] G.C. Exhs. 6(b), 9(b), and 11(b); Resp. Exhs. 5(a), (b), (c), (d), (d), (f), (g), and (h). There are two exhibits marked 5(d), one a certification executed by driver Daniel M. Sidden on December 1, 1980, and the other a certification executed by driver Tarence W. Hamby, Jr., on a partially legible date which appears to be December 12, 1980. Resp. Exh. 5(e) originally was dated, but the date was crossed out. Three of the exhibits are duplicates—G.C. Exh. 6(b) and Resp. Exh. 5(b); G.C. Exh. 9(b) and Resp. Exh. 5(g); and G.C. Exh. 11(b) and one of the two Resp. Exhs. marked 5(d).

[7] The pleadings establish and I find that Perry was a supervisor within the meaning of the Act.

by Perry on February 16, 1981, and pages from a new "Fleet Drivers Manual" were projected onto a screen.

One section of the manual, on "Prohibited Conduct" (sec. I-A), states that "[f]alsification of any relevent [sic] information requested by the Company," or "[l]oss of driver's license due to state or federal action" will result in immediate discharge. Another section on accidents (sec. I-B) lists disciplinary action ranging from a violation notice to discharge. "Other" conduct which will be subject to "progressive disciplinary" action (sec. I-C) includes failure to report any moving violation within 72 hours, receipt of more than two moving violations within a 30-day consecutive period, or more than four in a 12-month consecutive period. Failure to comply with Federal safety regulations and other Federal and state rules are also listed as "other" conduct subject to progressive discipline.

A section on progressive discipline (sec. II) states that it is to be utilized in a "positive manner," and that the goal is "fairness" to every employee and improvement of employee performance. Progressive discipline is to be imposed in five steps in cases of violation of the rules set out in section I-C. The steps include one oral reminder, two written reminders, and, after three "performance problems" in a 12-month period, a paid "decision-making" leave. If a fifth "disciplinary problem" occurs within 1 year of a step 1 action, the employee will be terminated. Disciplinary action over 12 months old is not counted in this system, and an employee is entitled upon request to review and a written decision concerning any disciplinary action (G.C. Exh. 5).

Martin testified that, when Plemmons was discharged, these rules and no others were in effect, from February 1981 through May 19, 1981.

During the meeting at Hernando on February 16, when the section of the manual concerning loss of a driver's license due to Federal or state action was projected onto the screen, Plemmons raised his hand and informed Perry that he had lost his driver's license and had been reinstated. He asked Perry whether the new manual provision would apply to him. According to Perry, he replied, "Of course not," since the Company could not put out a manual and then make it retroactive. Plemmons said that Perry replied that the action by the State of Mississippi did not affect Plemmons—"what is past is past, and we will start out anew. It's like you was hired [sic] from that day on." I credit this consistent testimony.

C. *Plemmons' Conversations With Kitchens in April—Respondent's Request for State Traffic Violation Records*

1. Plemmons' conversations with Kitchens

a. *Summary of the evidence*

Plemmons testified that he had three conversations with Kitchens in April 1981. In the first week of that month, he asked the supervisor whether the drivers could meet with Martin, Perry, and Kitchens concerning some things the Company was doing which the drivers did not understand. Kitchens replied that he would check into it. About a week later, according to Plemmons, he asked Kitchens whether he had been able to arrange the meeting, and the latter responded that "they" were not able to come down at the time. In the last part of April, according to Plemmons, he again asked Kitchens whether he had been able to get Perry and Martin, Perry alone, or "anybody from the home office in Carolina" to come down and meet with the drivers. Kitchens again replied that "they" were not able to come down. This made Plemmons "a little upset," and he told Kitchens that "we will have the meeting with or without you," but that Kitchens was invited.

Kitchens testified that he had a conversation with Plemmons about April 7, 1981, concerning some "problems," although he was not certain about the date. They were really the "same problems" that other drivers had already discussed with Kitchens, such as mechanical restrictions on the speed of company vehicles. The supervisor conceded that Plemmons invited him to a meeting that the drivers were going to have, but thought that this invitation was extended on the same day that Plemmons discussed the "problems." Kitchens stated that there was an announcement of the meeting on a bulletin board at the Company's facility, but that it was described as a "beer bust." According to Kitchens, he told Plemmons that he "tried to lead a Christian life," and that the meeting was not the place where he "ought to be." Kitchens denied that Plemmons asked him to invite anybody else to what he characterized as "the beer party."

b. *Factual analysis*

As more fully described hereinafter, Respondent's Hernando drivers held a meeting on May 2, 1981, at which they discussed various complaints against the Company. Plemmons' memory concerning his conversations with Kitchens, which preceded this meeting, was obviously more precise than Kitchens', and I credit his testimony as to the sequence of the three conversations he had with Kitchens in April.

I also credit Plemmons' testimony as to the substance of those conversations; i.e., that they involved driver complaints. Kitchens admitted that Plemmons said the meeting would include "drivers," and also admitted that the "problems" which Plemmons had presented to him were the same as those already voiced by other drivers. The one "problem" mentioned by Kitchens—restrictions on the speed of company vehicles—was clearly of concern to all the drivers, in light of their complaint, described hereinafter, that other company practices slowed them down.

Although the meeting may have been advertised as a "beer bust," as Kitchens stated, he was told by Plemmons that it involved driver complaints. The supervisor's reference to a "beer party" cannot negate the fact that he knew driver complaints were to be discussed, and that Plemmons wanted him to invite higher company authority to talk to the drivers about those matters. Although Kitchens may have had scruples against attending gatherings where alcoholic beverages were being consumed, his actions during these events were those of an individual who did not want to get into matters over his head,

particularly where labor relations were involved. He took no action whatever without "checking" with higher authority.

I find that Plemmons, on three occasions in April 1981, asked Kitchens to get some higher supervisor or company officer to come to the Hernando facility in order to discuss complaints which the drivers had against the Company. Kitchens replied to the first request that he would check into it, and to the last two requests that the officials could not come to Hernando.

2. Martin's visit to Hernando

Jay Martin, director of fleet operations, visited the Hernando facility on April 21 or 22, 1981, according to his testimony. He asserted that he met Plemmons at that time, and had a brief, casual conversation in which there was no mention of grievances.

Martin stated that he saw the drivers' certifications of traffic violations (which had been executed the preceding December) during his April visit, and at that time ordered reports on the drivers from the State Motor Vehicle Department. According to Martin, he was then reviewing the records of Respondent's drivers at all of its facilities pursuant to Department of Transportation regulations. Martin denied that Kitchens had spoken to him about Plemmons, or that he heard anything about grievances, at the time of this trip to Hernando.

D. *The Meeting of the Drivers and Plemmons' Meeting With Martin*

1. Summary of the evidence

All but one or two of the Hernando drivers held a meeting on May 2, 1981,[8] at Lake Arkabutla, located south of Hernando, according to the testimony of Plemmons and several of the drivers. They discussed a variety of complaints against the Company. Plemmons testified on cross-examination that the drivers discussed the possibility of a strike. He made notes of the meeting and was selected by the drivers as their "spokesman" to present the complaints to management. Employee Clarence Hamby, Jr., called as a witness by Respondent, said that there was no discussion of a strike. I credit Plemmons, whose memory of the meeting was superior to Hamby's.

Jay Martin, director of fleet operations, denied knowing that Plemmons wanted to talk with him. However, upon being shown his pretrial statement, Martin testified that Kitchens "had said" that Plemmons was "upset about his truck and some other things."

According to Plemmons, Hernando secretary Barbara Vickery called him about 10 a.m. on the Monday following the meeting at Lake Arkabutla, and asked him whether he could come to the warehouse and meet with Martin at 12:30 p.m. Plemmons agreed, and arrived with the notebook containing his notes of the drivers' complaints. Plemmons met Martin in Kitchens' office between 12:30 and 1 p.m. Kitchens was not present. Plemmons testified that, as he walked in, Martin said that he had heard that "we had a few complaints down here." Plemmons testified that he answered in the affirmative, stating that "we did have a few complaints." Plemmons agreed on cross-examination that he did not tell Martin that he was the drivers' "spokesman," "using that word." However, he contended that he used the word "we" when discussing the complaints, and thus manifested to Martin the fact that he was concerned with complaints of persons other than himself. Plemmons told Martin, "This is what we went over at the lake," according to his testimony.

Plemmons testified that Martin said at the beginning of the conversation that Plemmons had "ruined his weekend" because Martin had to fly down during the weekend. Plemmons affirmed that he showed Martin his notebook, and laid it on the desk. The notes are written on two pages, and are entitled "Bitches & Gripes—Lowe's Fleet Division (Hernando)." Various subjects are listed on the exhibit, and page 2 contains the legends, "Driver's [sic] punch time cards," and "Company Stand Behind Driver's [sic] on Log Violations & Speeding Tickets!" (G.C. Exh. 18.)

Plemmons and Martin then discussed each of the topics listed in the notebook, according to Plemmons. To the complaint that the stores were slow in unloading the drivers' trucks, Martin replied that he would see what he could do about it. Another objection was the fact that drivers from other companies were making deliveries of company merchandise, while Respondent's drivers ended up with unused time at the end of the week and a lesser number of miles than was previously the case. Martin replied that it cost Respondent less to have another company make these deliveries. Plemmons protested the manner in which the drivers were required to maintain their log books, and Martin replied that the Carolina facility was doing it the same way. Plemmons asked why vehicles were not repaired after drivers reported equipment deficiencies, and Martin said that he would take care of it immediately. According to Plemmons, Martin "got on the phone then and chewed the mechanic out."

Plemmons also protested the lack of spare trucks at Hernando, resulting in delays in making assigned runs. Martin replied that the Company did not have any spare trucks for Hernando. Plemmons noted that the trucks at Respondent's Wilkesboro facility were "painted up fancy, had chrome all over them." Martin replied that the Wilkesboro warehouse was making money, and that Hernando was not. Plemmons wanted to know why the drivers could not get time off whenever they pleased, charging it to earned sick leave or vacation time. Martin replied that that was not "good enough," and that the drivers had to show a "legitimate reason" for time off. Plemmons wanted to know why the Wilkesboro drivers received company trips and picnics, and Martin again told him that Wilkesboro was "making money."

Plemmons asked for regularly scheduled meetings between the drivers and management, but Martin stated that company officials were not in Hernando with any regularity. To Plemmons' request that the stores stay open a bit longer if the driver was going to be late, Martin replied that he would check into it, but that it

[8] Plemmons stated that the meeting took place 2 days before his meeting with Martin. The latter testified that his meeting with Plemmons occurred on May 4.

was between the driver and the store. When Plemmons asked for more rapid reimbursement for drivers' expenses, Martin said that he did not take care of the payroll. The company official said that he would check into a request for cheaper insurance, and for financial assistance to drivers jailed for traffic violations.

Plemmons testified that both he and Martin were "a little upset." After discussion of these topics, Martin told Plemmons that he had a "bad attitude" about his job, according to Plemmons.

Martin testified that the meeting began at or about 10:30 a.m., and lasted about half an hour. It opened with Martin's telling Plemmons that he understood that the latter was concerned about his own truck being "cut back" in speed, after which Martin explained the necessity of doing so. Delay in the unloading of trucks was also discussed. The director of fleet operations did not recall any other subject being discussed.

Martin denied that Plemmons asserted that he was representing the drivers or presenting a petition on their behalf. The witness was asked whether Plemmons laid a notebook on his desk, and answered that he did not recall. Shown the actual notebook, Marten said that he did not recall seeing it before.

Respondent's counsel asked Martin whether Plemmons said that other drivers were concerned about the same subjects. The initial answer of the witness was, "Yes." Martin then stated that he misunderstood the question. After it was restated, Martin changed his answer and denied that Plemmons mentioned other drivers' being interested in the same topics. The witness testified that he did not remember whether Plemmons used words such as "we," "us," or "the drivers." According to Martin, the meeting ended on an amicable note. Plemmons was "very pleased," and told Martin that "it was just lack of communications." Martin left Hernando at 5 p.m. that day.

2. Factual analysis

It is undisputed that most of Respondent's drivers at its Hernando facility met at Lake Arkabutla on May 2, and discussed various complaints against the Company. It is also undisputed that Plemmons was present at the meeting, recorded the topics in a notebook, and was selected as the employees' representative for the purpose of presenting the complaints to management. Further, there is no question about the fact that Plemmons was called by a company secretary on the morning of May 4, that he was asked to come to a meeting with company official Martin that day, and that Plemmons complied with this request.

Plemmons' testimony concerning the topics which were discussed during the conversation has documentary support in the form of the notebook. Since Martin did not deny that topics other than those that he mentioned were discussed, I credit Plemmons' otherwise credible testimony concerning the subject matter of the conversation. Since Martin did not deny seeing Plemmons' notebook prior to the day of the hearing, but merely testified that he did not recall seeing it, I credit Plemmons' testimony that he showed it to Martin. Further, since Martin did not recall whether Plemmons placed the notebook on the desk, I credit Plemmons' testimony that he did so. As Martin could not recall whether Plemmons used the plural pronoun "we," I credit the latter's testimony that he did so. In sum, I credit Plemmons' account of the substance of the conversation.

Further, Martin failed to deny Plemmons' testimony concerning Martin's opening and closing remarks—that Plemmons had ruined Martin's weekend, and that Plemmons had a bad attitude about his job. I credit Plemmons' testimony on these issues.

E. *Plemmons' Discharge*

1. Martin reviews Plemmons' driving record

The State Motor Vehicle Department reports on driver violations are date stamped May 4, 1981, by the department, the same day as Plemmons' conversation with Martin. They arrived in Hernando on May 5 or 6, according to Kitchens and Martin. The latter returned to Hernando on May 6, 2 days after his conversation with Plemmons, on what he described as "a free ride." He testified that he discussed operational problems with Kitchens, and also reviewed the drivers' records. One of them, Plemmons', appeared to have an excessive number of violations. Martin took Plemmons' file back to his office in North Wilkesboro for "further study."

The state records covered a 3-year period ending May 4, 1981. As described above, those records show that Plemmons had seven speeding violations from December 1978 through May 4, 1981. This was the largest number of reported violations, the next highest number at Hernando, four violations, having been acquired by driver Daniel M. Sidden.[9] Also as noted, one violation reported by Plemmons, in December 1979, does not match any date on the state reports. His April 1, 1981, violation was a matter of record. The biggest difference between Plemmons' certifications and the state records was caused by the fact that Plemmons did not submit any certification for 1980, when he had four violations. A certification in June 1979 did not list a December 1978 violation (G.C. Exh. 4(a)).

Martin affirmed that he discovered on April 21, 1981, during his first trip to Hernando, that Plemmons had not submitted a 1980 certification at the time when the other Hernando drivers had done so. It had been "overlooked." On May 6, when the state reports arrived in Hernando, Martin learned that Plemmons' certified violations did not equal those in the state report. Nevertheless, he did not ask Plemmons to explain the discrepancy, according to his testimony. "It wouldn't have made any difference," Martin stated. He concluded that Plemmons' certifications were "falsified."

Martin was shown a copy of the letter from the Mississippi Motor Vehicle Department advising Plemmons that his driving privilege had been restored—which Kitchens had placed in Plemmons' file. Asked whether this letter had been maintained in Plemmons' personnel file, Martin said that he did not know whether "it was put in there for a specific reason." Asked the same ques-

[9] G.C. Exh. 11(a); Resp. Exh. 5(d).

tion again, Martin said that he could not remember. He denied knowledge on May 6 of the length of Plemmons' suspension—at the time he was reviewing Plemmons' driving record. Martin asserted that he did not attempt to determine the length of the suspension because "it seemed irrelevant" and "meant nothing" to him. It involved a "former supervisor." However, Kitchens testified that he told Martin the "whole story" about Plemmons on May 6.

2. Martin's asserted comparison of Plemmons' record with those of other drivers

Martin said that he compared the records of all the drivers. The director of fleet operations testified that drivers Harvel T. Crum and Larry White had failed to submit certifications for one violation each, and that he was aware of these omissions. He also averred that driver Gerald Allison's certification of 1979 had been signed by a secretary. Martin did not know the reason for this. "Our record keeping wasn't the best in the world at that time," he said. Respondent's records also show that Sidden submitted a certification dated December 1, 1980, reporting no violations during the preceding 12 months,[10] whereas the Mississippi record shows a speeding violation on February 4, 1980.[11] Sidden did submit a certification in April 1980 showing an Alabama violation on the same date,[12] and Martin assumed, without checking, that this was the same violation as the one reported by Mississippi.

Martin asserted that drivers at Hernando had been discharged because of accidents. Kitchens, on the other hand, said that there had been four or five minor accidents, but that no one had been discharged for this reason since he became a supervisor. Kitchens had been a supervisor at Hernando since August 25, 1980, while Martin assumed his position on March 30, 1981. Kitchens clearly had superior knowledge about events at Hernando, and, further, was a more credible witness. I credit Kitchens' testimony. Martin admitted that Plemmons had not had any accidents. He did not compare Plemmons' accident record with those of other drivers, according to his testimony. The Federal safety regulations, on which Martin said that he relied, require a motor carrier to consider a driver's accident record in determining whether he meets the minimum standards for safe driving.[13]

Martin asserted that he compared the driving record of Plemmons with the records of Respondent's drivers in all three facilities. However, he admitted on cross-examination that the drivers' certifications at the Thomasville facility were not dated at the time the drivers executed them, and were actually dated at a later time. Therefore, Martin agreed, there was nothing on the face of the certification to show the actual date of execution, or the specific preceding 12-month period to which it referred. He also admitted that he did not have driver certifications from Thomasville or North Wilkesboro for the entire 3-year period preceding his examination of the records. Instead, the certifications went back only to 1980.

The state records (North Carolina) pertaining to Respondent's other drivers, as distinguished from their certifications, show that one driver had five convictions between December 1978 and November 1980, four for speeding and one for reckless driving, plus a suspension;[14] one had four speeding tickets over a 2-year period, and a suspension;[15] and one had four speeding tickets and a bond forfeiture over a 16-month period.[16] There is no evidence in the record that Respondent warned or otherwise disciplined these drivers.

3. The discharge

On May 19, Martin gave Plemmons the following letter:

> Effective Wednesday, May 13, 1981,[17] you are being terminated from employment of Lowe's Companies, Inc., for violation of the following:
>
> > Failure to comply with the Federal Motor Carrier Safety Regulations as prescribed by the Department of Transportation, Section 391.27, Paragraph B, which requires a driver to furnish to his employer a list of all violations he is convicted of for the preceding twelve (12) months.[18]
> >
> > Violation of Section 1, Paragraph A, Sub-part 4, which is: Falsification of any relevant information requested by the company.[19]
> >
> > Due to this and the fact you have received eight (8) citations for speeding in the past two (2) years, we can no longer continue your employment with our company [G.C. Exh. 3].

Plemmons stated that he asked Martin during the exit interview why he was being fired, and that Martin replied that it was "on the paper."

[10] G.C. Exh. 11(b); Resp. Exh. 5(d).
[11] G.C. Exh. 11(a); Resp. Exh. 5(d).
[12] G.C. Exh. 12(b).
[13] *Infra*, fn. 18.

[14] Brice R. Wrenn, Resp. Exh. 3(t).
[15] Randall L. Ashburn, Resp. Exh. 3(d).
[16] Woodrow D. Absher, Resp. Exh. 2(n).
[17] The May 13 date was a typographical error and should have been May 19, according to Martin.
[18] Sec. 391.27(a) of the Federal Motor Carrier Safety Regulations states that *each motor carrier* "shall, at least once every 12 months, *require each driver* " to furnish a list of traffic violation convictions during the preceding 12 months (emphasis supplied). Par. (b) then requires each driver to furnish the list "required in accordance with paragraph (a) . . . ."

Sec. 391.25 requires the motor carrier to conduct a review of each driver's driving record every 12 months to determine whether the driver meets minimum standards for safe driving. "The motor carrier must . . . consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited disregard for the safety of the public."

Other sections of the safety regulations concern the following subjects: 390.33—a requirement that motor carriers obey the regulations; 391.5—a requirement that each motor carrier and driver be familiar with the rule; 398.4—a requirement that driving rules be obeyed; 391.41—physical qualifications of drivers; and 391.51—maintenance of driver files (G.C. Exh. 16). Martin said that he relied on these sections of the safety regulations in making the decision to terminate Plemmons.

[19] This is an apparent reference to the "Fleet Drivers Manual," *supra*.

On May 22, Perry wrote Plemmons a letter restating the reasons for Plemmons' discharge set forth in Martin's letter. The letter concludes as follows:

> In addition to this, on June 20, 1979, we find that you had committed the same violation for which you were now terminated. A record of your speeding violations now makes it impossible for Lowe's to continue your employment as a safe road driver. Under numerous circumstances involved, I have no other choice but to support the decision made in termination [sic] your employment with Lowe's Companies, Inc. [G.C. Exh. 13.]

Martin asserted that this last statement referred to Plemmons' failure to report all his violations. Martin agreed that Plemmons was not discharged in June 1979 when he "committed the same violation."

Martin testified that his decision was based on Plemmons' excessive number of tickets and his "total disregard for the public safety." Plemmons had more tickets than any other driver.

Martin agreed with Plemmons that the latter had never received a warning. Asked why Plemmons did not receive an oral warning in accordance with the Company's new progressive discipline system, Martin replied that that program was "less than 60 days old," and Plemmons "had not had time, most likely."[20] As described above, progressive discipline under the new rules would be initiated by more than four moving violations in any consecutive 12-month period.[21]

In answer to questions by the General Counsel, Martin testified initially that he never informed the drivers that it was the Company's policy to discharge drivers who received eight speeding tickets within a 2-year period. On later examination by Respondent's counsel, Martin asserted the contrary; i.e., he *had* informed the Hernando drivers that they would be fired if they received eight tickets within 2 years. Martin again contradicted himself on cross-examination, and ended by admitting that he never made this statement prior to Plemmons' discharge. It was his "opinion," not a "rule," according to Martin. Former Supervisor Jerry Miller denied that there was any such policy at the time of Plemmons' discharge, and I so find.

Asked to define the 2-year period set forth in his letter to Plemmons, Martin initially stated that it was the 2-year period prior to May 19, 1981. Martin then testified that he was referring in his letter to the state records, which involved the prior 3 years, and finally said that it really involved 26 months. However, he put down 2 years in his letter because it was a "minor point," and he did not "see the point of getting the exact date."

With respect to the "falsification" of information allegation in his letter to Plemmons, Martin testified that he was referring to Plemmons' certifications of violations. He provided no explanation for the fact that the difference between the number of tickets reported by Plemmons and the number reported by the State was principally caused by Respondent's failure to require Plemmons to file a certification for 1980.[22]

Martin testified that he did not discipline Crum because the latter's failure to list one ticket was "not serious enough to fire a man." He alleged that Crum resigned, but admitted that this took place after Plemmons' discharge. With respect to White's failure to list a ticket, Martin said that that was "quite different" from Plemmons' failure to list "six or seven."

Martin also contended that one of the factors in his decision to discharge Plemmons was the requirement in the Federal safety regulations that each driver must meet minimum standards for safe driving, but admitted that this was the same factor as the total number of Plemmons' tickets. Martin additionally asserted that he was afraid that Plemmons would have an accident, and that the Company would be involved in a lawsuit. However, as noted, Plemmons did not have any accidents, and Martin did not compare his accident record with those of other drivers.

F. *Legal Analysis*

It is obvious that Plemmons and the drivers were engaged in concerted protected activity at Lake Arkabutla. They discussed complaints against Respondent, and selected Plemmons as their spokesman to present the complaints to management. Respondent does not dispute these facts. Rather, it argues, the Company had no knowledge of them. I do not agree.

The substance of Plemmons' conversations with Kitchens in April was that the drivers had problems concerning, at the minimum, their working conditions, and that they wished to discuss these problems with top management officials. As a result of these conversations, Kitchens knew that the drivers were concertedly discussing their working conditions and that Plemmons was speaking on behalf of the drivers. Kitchens also knew that the meeting at Lake Arkabutla involved a discussion of the drivers' working conditions in addition to drinking beer. Kitchens was then a supervisor. Under established law, such knowledge is attributed to Respondent. Indeed, Kitchens told Plemmons in early April that management officials were not able to come down at that time, thus indicating that Kitchens called the officials and informed them of his conversations with Plemmons.

Martin's statement to Plemmons at the beginning of their May 4 conversation—that Plemmons had ruined Martin's weekend by requiring him to fly down—shows that the principal reason for Martin's visit was Plemmons' prior conversations with Kitchens, and that these conversations were perceived by management as involving complaints of all the drivers. It is highly improbable that Martin would have made an undesirable trip merely to talk to one employee about his problems. Martin as well as Kitchens thus knew at the beginning of the con-

[20] As noted above, the new disciplinary rules went into effect in February 1981, and Plemmons thereafter received a ticket on April 1, 1981, which he reported to the Company.

[21] Although Plemmons had four violations in 1980, he did not have more than four, and no combination of his violations adds up to more than four within a 12-month consecutive period.

[22] In failing to require Plemmons to file a 1980 certification, it would appear that Respondent did not adhere to the requirements of sec. 391.27(a) of the safety regulations, *supra* at fn. 18. However, I make no finding in this respect.

versation that the subject of the discussion was the drivers' working conditions at Hernando, not merely individual complaints from Plemmons. Kitchens acknowledged that other drivers had come to him with similar complaints, and the Lake Arkabutla meeting demonstrates that the drivers were acting concertedly. It is unlikely that Respondent viewed the matter differently.

The tenor of the discussion between Martin and Plemmons further shows that concerted activity was its subject. Thus, Plemmons responded to Martin's opening remark about a "few complaints down here" with the answer, "We do have a few complaints." Plemmons showed Martin a notebook page entitled "Bitches & Gripes—Lowe's Fleet Division (Hernando)," and laid it on the desk. Plemmons said during the discussion that "this is what we went over at the lake." The notebook reference to the entire fleet division and Plemmons' continuous use of the plural pronoun constitute further evidence that the complaints of all drivers, and not just those of Plemmons, were the subject matter of the discussion. Finally, the number and variety of the topics of discussion, covering almost the entire range of the drivers' working conditions, belie Respondent's contention that Plemmons was only making a personal complaint.

Respondent cites, in support of its case, the "strikingly similar factual situation" in *Hawthorne Mazda, Inc.*, 251 NLRB 313 (1980), enfd. 659 F.2d 1089 (9th Cir. 1981).[23] In that case, as here, the discharged employee engaged in concerted activity with other employees. He also secured employee signatures on a petition, and, as "informal spokesman," led a discussion of employee complaints in a meeting of employees which was attended by at least one supervisor. The discharged employee later met alone with the Company's vice president and, after a similar statement of complaints, was discharged. The Board's decision recites the details of the concerted activity, the first meeting, and continues as follows:

> [The discharged employee] was continuing in his capacity as informal spokesman when he confronted [the vice president] with the substance of the mechanics' grievances. That [the vice president] undoubtedly realized that the other mechanics shared [the discharged employee's] dissatisfaction with current working conditions and that he knew [the discharged employee] was speaking on their behalf is revealed by his admission that [the discharged employee] stated that "[A]ll the mechanics were upset with the efficiency method of pay plan." Furthermore, the Administrative Law Judge credited [the discharged employee] that he consistently used the word "we" discussing the common grievances. [251 NLRB at 315-316.][24]

Respondent argues that *Hawthorne Mazda* supports its position because the employer therein had "independent knowledge" of the concerted nature of the discharged employee's activities. "The awareness of the concerted nature of [the discharged employee's] complaints flowed from the presence and acquiescence of [the discharged employee's] fellow employees," argues Respondent, apparently referring to the first meeting.[25]

This argument overstates the amount of evidence required to establish an employer's knowledge of the concerted nature of an employee's activity. In *Sencore, Inc.*, 223 NLRB 113 (1976), enfd. 558 F.2d 433 (8th Cir. 1977), a supervisor overheard an employee explaining to other employees that a recent pay raise was inadequate according to her computations. Despite the absence of any evidence that the other employees authorized the discharged employee to speak for them, the latter's termination was found by the Board, with judicial approval, to be violative of the Act. The Board has also concluded that an individual, apparently acting alone, is engaged in protected concerted activities if his complaints refer to a matter common to other employees. *Bucyrus-Erie Company*, 247 NLRB 519, 524 (1980).

I need not decide the matter on this rationale, however, because the record shows that Respondent had actual knowledge that Plemmons was acting on behalf of the other drivers. The fact that his complaints were not advanced in the presence of other employees does not negate the other evidence, outlined above, which establishes such knowledge.

Respondent next argues that Plemmons was discharged for cause. As noted above, the company letters to Plemmons give five reasons for the discharge: (1) Plemmons' alleged failure to comply with the Federal safety regulation requiring drivers to furnish a list of all traffic violations for the preceding 12 months; (2) falsification of relevant information requested by the Company; (3) the fact that Plemmons received eight citations for speeding within the past 2 years; (4) the allegation that he had previously committed the same violation (for which he was not fired); and (5) the allegation that he was not "a safe road driver." Respondent's brief adds a few more reasons—that Plemmons had more tickets, more speeding tickets, and more unreported tickets than any other driver.[26] None of these is a valid reason.

Plemmons did not violate the safety regulation requiring him to furnish a list of violations in 1980. Paragraph (a) of section 391.27 directs each motor carrier to "require" each driver to furnish the list, and paragraph (b) orders the driver to furnish the list "required in accordance with paragraph (a)." But the Company never required Plemmons to furnish a 1980 certification. It simply "overlooked" the matter, according to Martin. What actually happened is that Plemmons asked Barbara Vickery in January 1981 whether he should list all violations for the preceding 12 months, and received erroneous information from the secretary.

The "same violation" mentioned in Perry's supplemental discharge letter undoubtedly refers to Plemmons' June 1979 certification, which failed to mention the first ticket he received, in December 1978. It is not clear, however, that Plemmons failed to report this violation, since the fact that he apparently submitted two certifica-

[23] Resp. br., p. 5.

[24] See the Board's analysis of the discharged employee's use of the plural pronoun as indicating that he was speaking on behalf of the other employees. 251 NLRB at 316, fn. 27.

[25] Resp. br., p. 5.

[26] Resp. br., p. 9.

tions in 1979 suggests that Respondent was then requiring certifications on something other than a 12-month basis, with consequent overlapping of 12-month periods. It is impossible to determine Plemmons' actual certifications in 1979. As Martin admitted, "Our record keeping wasn't the best in the world at that time."

In any event, Martin made no attempt to ascertain whether Plemmons reported the December 1978 violation. The failures of Crum and White to list one ticket each were dismissed by Martin as "not serious enough to fire a man." Martin did not investigate the December 1979 violation reported by Plemmons but not by the State. The director of fleet operations did not question Plemmons about the discrepancy between the total of the latter's certifications and the state report despite Martin's own knowledge that the Company had failed to require a 1980 certification from Plemmons. An explanation from Plemmons "wouldn't have made any difference," according to Martin. If he was really disinterested in the truth about the accuracy of Plemmons' certifications, then the latter's asserted "falsification" of records could not have been a reason for his discharge.

Martin had difficulty with the "8-violations-in-2-years" reason which the Company advanced. In the first place, there were more than 2 years. Further, there was no such rule at the time of Plemmons' termination, as Martin was forced to concede after evasive and contradictory testimony on the subject. He was unable to give a plausible reason for Respondent's failure to utilize its new progressive discipline system, which Perry had explained to the Hernando drivers in February with much fanfare. These were the only rules in existence at the time of Plemmons' discharge, according to Martin. And Perry had specifically told Plemmons that his prior violations would not be considered with the implementation of the new rules. Yet the rules were not followed. Martin's asserted reason—that the rules were less than 60 days old, and that Plemmons "had not had time"—is simply nonsense.

The asserted reason that Plemmons was not a safe driver is also unpersuasive. As Martin agreed, this was the same reason as the fact that Plemmons had received numerous speeding tickets. The Company failed to consider Plemmons' accident record in making this determination despite the fact that it is required to do so by the safety regulations. The reason may be that Plemmons had no accidents, whereas there had been some at Hernando involving other drivers, without any resulting discharge. Respondent's brief makes much of the fact that Plemmons had more speeding tickets than any other driver. This, of course, was not one of the variety of reasons which Respondent gave Plemmons at the time of termination. Respondent also fails to explain its indifference to the infractions of other drivers with almost as many tickets, including one case of reckless driving—which the safety regulations require the Company to consider.

Respondent argues that Plemmons' driving record was newly discovered by Martin in May 1981. In response to the General Counsel's "anticipated" argument that Plemmons informed Perry about his suspension in February 1981, the Company notes that Plemmons did not tell Perry the reason for the suspension, or the number of tickets he had received. This argument is beside the point. Kitchens and Miller, both company supervisors, knew in November 1980 that Plemmons' license had been suspended for 30 days because of an excessive number of speeding tickets. The Company then accommodated him by giving him a nondriving job, and returned him to driving duties when his suspension was lifted. This is in stark contrast to its harsh discipline after he engaged in protected activities.

Martin's attitude toward those activities is revealed in his May 4 conference with Plemmons. He was disgruntled about having to make the trip, saying that Plemmons had ruined his weekend. And, at the conclusion, he told Plemmons that the latter had a "bad attitude." In fact, Plemmons' "bad attitude" was his assertion of the drivers' grievances and his role as their spokesman. *Great Dane Trailers Indiana, Inc.*, 252 NLRB 67, 79 (1980).

After Plemmons' reinstatement to driving duties, he received another ticket, on April 1, 1981, and reported it to Kitchens. The Company did nothing. It was not until Plemmons' conversation with Kitchens about the drivers' complaints in April, and his May 4 conference with Martin on the same subject, that the Company decided he was an unsafe driver and terminated him. The timing of the discharge, immediately subsequent to Plemmons' protected activity, suggests that it was motivated by that activity.

Respondent's "8-violations-in-2-years" reason was newly invented by the Company without notice to the employees, and was retroactively applied to justify Plemmons' discharge. In similar circumstances, the Board has considered the asserted reason to be pretextual. *Roadway Express, Inc.*, 239 NLRB 653, 654 (1978). This reasoning applies all the more herein because Respondent had just announced new rules to cover subjects of this nature, with progressive discipline designed to improve employee performance, and then promptly discarded those rules in this case.

In sum, the General Counsel has established that Plemmons engaged in concerted and protected activity, and that this activity was the real reason for his discharge. Although Respondent has described Plemmons' driving record, it has not established that it would have discharged him because of that record if he had not engaged in protected activities. The many inconsistencies in the Company's argument, and its failure to apply even minor discipline when it knew that he had an excessive number of speeding tickets and a suspension, belie its contention that that record was the reason for the termination. As the Board has stated with judicial approval in a similar case, "The mere presence of possible valid reasons for discipline does not insulate a discharge if those reasons were not, in fact, the reasons for the discharge." *Rose's Stores, Inc.*, 256 NLRB 550, 552 (1981), enfd. 681 F.2d 816 (4th Cir. 1982).

Accordingly, I find that, by discharging Frank T. Plemmons, Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Lowe's Companies, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging Frank T. Plemmons on May 19, 1981, Respondent committed an unfair labor practice in violation of Section 8(a)(1) of the Act.

3. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent unlawfully discharged Frank T. Plemmons on May 19, 1981, it is recommended that Respondent be ordered to offer him immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of earnings he may have suffered by reason of Respondent's unlawful conduct, by paying him a sum of money equal to the amount he would have earned from the date of his unlawful discharge to the date of an offer of reinstatement, less net earnings during such period, with interest thereon, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[27]

Upon the foregoing findings of fact, conclusions of law, and the entire record, I recommend the following:

ORDER[28]

The Respondent, Lowe's Companies, Inc., Hernando, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act by discharging employees for engaging in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Frank T. Plemmons immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of Respondent's unlawful conduct, in the manner described in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its facility in Hernando, Mississippi, copies of the attached notice marked "Appendix."[29] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by other material.

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[27] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[29] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to carry out its provisions as follows:

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act by discharging employees for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the Act.

WE WILL offer Frank T. Plemmons immediate and full reinstatement to his former job or, if that job no longer exists, to a sustantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of earnings he may have suffered by

reason of our unlawful discharge of him, with interest added to backpay.

LOWE'S COMPANIES, INC.